

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, August 9, 2006, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Ray Dwyer

**BOARD MEMBERS ABSENT:** Walter Schmidt

**SECRETARY TO THE BOARD:** Mary Finet

**OTHERS PRESENT:** Town of Merton Board of Adjustment  
Durward and Nancy Baker, BA06:054, petitioners  
Virgil Wittenburg, BA06:054, builder  
Mike and Bobbie Keelan, BA06:054, neighbors  
Frank and Jan Swartz, BA06:054, neighbors  
Art and Ann Fink, BA06:054, neighbors  
Jan Gibeau, BA06:054, neighbor  
Dawn Olson Knapp and Mark Knapp, BA06:056, petitioners  
Wolfgang Strohwig, BA06:055, petitioner  
Atty. Mark G. Blum, BA06:055, representing the petitioner  
John Van Goethem, BA06:057, petitioner  
Todd Whittaker, BA05:081, petitioner (present for reconsideration by the Town of Merton Board of Adjustment of a condition of approval of variances granted on October 26, 2005)

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Dwyer *I make a motion to approve the Summary of the Meeting of July 26, 2006.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

**NEW BUSINESS:**

**BA06:054 DURWARD BAKER, Trustee of the Diana J. Baker Family Trust**

Mr. Schultz *I make a motion to adopt the staff's recommendation for approval, with the conditions stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Dwyer and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The new residence shall be in substantial conformance with the preliminary plans on file with the application.
2. The first floor of the new residence must be at or above the flood protection elevation of 872 ft. above mean sea level.
3. The new residence may not have a full basement. It may have a crawl space, but if the floor of the crawl space is below the 100-year flood elevation of 870 ft. above mean sea level, the petitioner shall obtain the services of an architect, geophysical engineer, or other appropriate registered professional, to design the crawl space to be water-tight, in order to avoid infiltration of groundwater or floodwater into the crawl space. If the floor of the crawl space is proposed to be below the 100-year flood elevation of 870 ft. above mean sea level, plans prepared by the registered professional indicating how that will be accomplished, must be submitted to the Planning and Zoning Division Staff for review and approval, prior to the issuance of a Zoning Permit.
4. The new residence shall be centered between the side lot lines, with the closest corners at least 5 ft. from the side lot lines, as measured to the outer edges of the walls, with overhangs not to exceed two (2) ft. in width. Any proposed patios or decks shall also be located no closer than 5 ft. to the side lot lines.
5. There shall be no entrance doors on the north or south sides of the new residence, unless any stoops or stairs necessary for access are at least 5 ft. from the side lot lines.
6. Any sidewalk or walkway between the residence and the side lot line must be located at least two (2) ft. from the side lot line.
7. The new residence, including any decks or patios, must be located no closer to the lake than the residence on the adjacent lot to the south. Note: According to a Plat of Survey on file in the Waukesha County Department of Parks and Land Use, the residence on the adjacent lot to the south has a shore setback of 55.9 ft.
8. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
9. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location and elevation of the proposed residence and attached garage and the location of any proposed patios or decks, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
10. In order to ensure the construction of a new residence does not result in adverse drainage onto adjacent properties, a detailed grading and drainage plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning

Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the grading and drainage plan: a timetable for completion, the source and type of fill, a complete vegetative plan including seeding mixtures and amount of topsoil and mulch, an erosion and sediment control plan, and the impact of any grading on stormwater and drainage. This grading plan may be combined with the Plat of Survey required in Condition No. 9.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Hardships exist in this case due to the size and configuration of the lot. Conformance with the minimum open space requirement of 15,000 sq. ft. is impossible, given that the lot is only 7,626 sq. ft. in area. Conformance with the maximum permitted floor area ratio of 15% would allow a total floor area of only 1,143 sq. ft., whereas the minimum required house size is 1,300 sq. ft. Due to the narrow lot width, which decreases from the lake to the road, a reasonably sized residence cannot be located on this lot of record without a variance from the offset requirement. Conformance with the shore and floodplain setback requirements would require even a scaled-down version of the proposed residence to be located closer to the road, where the lot becomes narrower. Denial of shore and floodplain setback variances would be unnecessarily burdensome because that would require reducing the width of the proposed residence, which is only 28 ft. wide, in order to maintain a reasonable offset from the side lot lines.

Further, the approval of the requested variances will result in a more conforming situation, with a new residence located farther from the lake and the floodplain and farther from the side lot lines than the existing residence. The proposed residence and attached garage are modest in size, in keeping with other development in the neighborhood, and will have a footprint that is less than the footprint of the existing residence and detached garage. Therefore, the approval of this request, with the recommended conditions, is not contrary to the public interest and is in conformance with the purpose and intent of the Ordinance.

#### **BA06:056 DAWN OLSON KNAPP**

Mr. Dwyer

*I move to approve the requested variances and special exceptions in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the State Report.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The variances granted by the Board of Adjustment on September 26, 1984 (BA84:106), to permit the construction of a 14 ft. x 34 ft., one-story addition to the residence and a 22 ft. x 24 ft. detached garage, shall be considered to be null and void.

2. The second floor addition to the residence shall not extend beyond the outer walls of the existing first floor, except in the southeast and southwest corners where the second floor may be cantilevered over the existing first floor in order to “square up” the second floor.
3. Prior to the issuance of a Zoning Permit, certification from a registered architect, structural engineer, or certified building inspector that the foundation is adequate to accommodate the proposed second floor expansion must be submitted to the Planning and Zoning Division staff.
4. A detailed cost estimate for the proposed remodeling and expansion of the residence must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
5. The garage must be located in conformance with the road setback requirement from Delafield Rd., which is 68 ft. from the centerline of the road right-of-way (35 ft. from the base setback line) and no closer to the west lot line or to 1st. La. than the existing residence, as measured to the outer edges of the walls.
6. A new driveway with access to Delafield Rd. (C.T.H. “DR”) will not be permitted without approval from the Waukesha County Department of Public Works. The Town of Summit shall review and approve any proposed new driveway access onto 1st La.
7. The garage shall be no larger than 576 sq. ft. and the overhangs of the garage shall not exceed two (2) ft. in width.
8. The garage must conform with the height requirement of the Ordinance, i.e. the height of the garage, as measured from the lowest exposed point to the peak of the roof, must not exceed 18 ft. The garage may contain an upper-level storage area only if the garage conforms with the height requirement noted above and only if the upper level is not accessible via a permanent staircase. The upper level of the garage may be accessed via pull-down stairs.
9. Prior to the issuance of a Zoning Permit, a complete set of plans for the proposed addition to the residence and the detached garage, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
10. Prior to the issuance of a Zoning Permit for a detached garage, a stake-out survey showing the location of proposed detached garage and the location of the driveway that will provide access to the garage, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
11. The existing 6.4 ft. x 12.3 ft. shed must be removed from the property no later than six (6) months after the issuance of a Zoning Permit for a detached garage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The

Planning and Zoning Division staff believes it would be unnecessarily burdensome not to permit the proposed second floor expansion of the residence and the construction of a detached garage. The proposed second floor addition will not decrease the open space on the property and therefore, is more in conformance with the purpose and intent of the Ordinance than the 14 ft. x 34 ft., one-story addition that was approved by the Waukesha County Board of Adjustment in 1984, but never constructed. The proposed garage is reasonably sized for the lot and the neighborhood and it will not adversely affect any of the surrounding properties or be contrary to the public interest. Therefore, the approval of the requested variances and special exceptions, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**BA06:055 WOLFGANG STROHWIG**

Mr. Dwyer

*I make a motion to deny the request, in accordance with the staff's recommendation, as stated in the Staff Report, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Bartholomew. Mr. Dwyer voted yes. Mr. Ward, Mr. Bartholomew and Mr. Schultz voted no. The motion was defeated.

Mr. Schultz

*I move to approve the petitioner's request to divide his lot into two parcels, each proposed parcel being over three acres, which meets the minimum lot size requirement.*

*The reasons for this approval are as follows:*

*The neighbors on the private road are supportive of the creation of an additional home site on the private road.*

*One additional home will not affect the traffic on the private road.*

*The only reason a variance is needed is because the easement at the start of the private road is only 33 ft. wide. That doesn't seem to have affected the traffic or the ingress and egress of fire department and medical emergency vehicles and one additional parcel will not affect it either.*

*It is a condition of approval that approval must be obtained from the Town of Merton Plan Commission and the Waukesha County Park and Planning Commission for the creation of a lot that does not abut a public road.*

The motion was seconded by Mr. Ward. Mr. Ward, Mr. Bartholomew and Mr. Schultz voted yes. Mr. Dwyer voted no. The motion was carried.

The staff's recommendation was for denial. The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. Denial of the requested variance will not prevent the property from being used for the permitted purpose of single-family residential use since it already contains a single-family residence. The restriction against dividing the lot is noted on the Certified Survey Map; therefore, the petitioner should have been aware when he purchased the property that the lot could not be divided and it is not unnecessarily burdensome to deny the request for a variance and for a modification of the condition placed on the variance granted in 1980. Further, although the existing lot is awkwardly configured and bisected by the private road, allowing it to be further divided would create an additional lot on a private road and a building site within the Primary Environmental Corridor, which is not in the public interest. Therefore, the approval of this request would not be in conformance with the purpose and intent of the Ordinance.

**BA06:057 JOHN VAN GOETHEM**

Mr. Bartholomew                      *I make a motion to adopt the staff's recommendation, as stated in the Staff Report.*

The motion was seconded by Mr. Schultz and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. The Ordinance does not permit more than two detached accessory buildings on a lot without approval from the Town Plan Commission. Therefore, unless one of the existing accessory buildings is removed, the petitioner must request such an approval from the Town of Merton Plan Commission. Prior to the issuance of a Zoning Permit, evidence that the Town of Merton Plan Commission has approved the addition of a third detached accessory building on this lot must be submitted to the Planning and Zoning Division staff.
2. The garage/storage building may not contain any bathroom facilities.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Variances require a demonstration that denial of the variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The Planning and Zoning Division staff believes it would be unnecessarily burdensome not to permit the proposed garage/storage building to be located as proposed and with the height proposed.

Although the property is used for residential purposes, it is in an area that is zoned General Business and if the proposed building was a commercial structure, the requested offset variance would not be required. In addition, the requested offset variance is from a lot line that abuts a property with an industrial use, which would not be adversely affected by the proposed garage/storage building. The proposed building height would be permitted if the building could be located so that all setback and offset requirements are exceeded by at least 9 ft., but this is not possible without relocating the existing driveway, which would require the removal of several mature trees. That would be contrary to the public interest. Finally, the proposed location for the garage/storage building is in one of the few open areas of the property where the building could be placed without removing mature trees. Therefore, the approval of the requested variances, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

**OTHER ITEMS REQUIRING BOARD ACTION:**

Mr. Ward *I make a motion to approve the attendance of any Board of Adjustment members at the Zoning Board of Adjustment Basic to Advanced Workshop sponsored by the University of Wisconsin-Extension Center for Land Use Education to be held in Hayward, Wisconsin on August 17, 2006.*

The motion was seconded by Mr. Bartholomew and carried unanimously.

**ADJOURNMENT:**

Mr. Bartholomew *I make a motion to adjourn this meeting at 8:47 p.m.*

The motion was seconded by Mr. Dwyer and carried unanimously.

Respectfully submitted,

Mary E. Finet  
Secretary, Board of Adjustment